

HB3746



99TH GENERAL ASSEMBLY

State of Illinois

2015 and 2016

HB3746

by Rep. Rita Mayfield

SYNOPSIS AS INTRODUCED:

625 ILCS 5/5-102.6 new

Amends the Illinois Vehicle Code. Limits the ability of a used motor vehicle dealer to modify or disclaim an implied warranty of merchantability. Provides that a used motor vehicle dealer may not exclude, modify, or disclaim the warranty before the vehicle is driven 500 miles or the expiration of 15 days after delivery of the used motor vehicle, whichever occurs first. Sets forth remedies and defenses.

LRB099 07271 JLS 27375 b

A BILL FOR

1 AN ACT concerning motor vehicles.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Illinois Vehicle Code is amended by adding
5 Section 5-102.6 as follows:

6 (625 ILCS 5/5-102.6 new)

7 Sec. 5-102.6. Used motor vehicles; modification or
8 disclaimer of implied warranty of merchantability limited.

9 (a) A used motor vehicle dealer may not exclude, modify, or
10 disclaim the implied warranty of merchantability prescribed in
11 Section 2-314 of the Uniform Commercial Code or limit the
12 remedies for a breach of the warranty before midnight of the
13 15th calendar day after delivery of a used motor vehicle or
14 until a used motor vehicle is driven 500 miles after delivery,
15 whichever is earlier. In calculating time under this
16 subsection, a day on which the warranty is breached and all
17 subsequent days in which the used motor vehicle fails to
18 conform with the implied warranty of merchantability are
19 excluded. In calculating distance under this subsection, the
20 miles driven to obtain or in connection with the repair,
21 servicing, or testing of a used motor vehicle that fails to
22 conform with the implied warranty of merchantability are
23 excluded. An attempt to exclude, modify, or disclaim the

1 implied warranty of merchantability or to limit the remedies
2 for a breach of the warranty in violation of this subsection
3 renders a purchase agreement voidable at the option of the
4 purchaser.

5 (b) An implied warranty of merchantability is met if a used
6 motor vehicle functions substantially free of a defect that
7 significantly limits the use of the used motor vehicle for the
8 ordinary purpose of transportation on any public highway. The
9 implied warranty of merchantability expires at midnight of the
10 15th calendar day after delivery of a used motor vehicle or
11 until a used motor vehicle is driven 500 miles after delivery,
12 whichever is earlier. In calculating time, a day on which the
13 implied warranty of merchantability is breached is excluded and
14 all subsequent days in which the used motor vehicle fails to
15 conform with the warranty are also excluded. In calculating
16 distance, the miles driven to obtain or in connection with the
17 repair, servicing, or testing of a used motor vehicle that
18 fails to conform with the implied warranty of merchantability
19 are excluded.

20 (c) An implied warranty of merchantability does not extend
21 to damage that occurs after the sale of the used motor vehicle
22 that results from:

23 (1) off-road use;

24 (2) racing;

25 (3) towing;

26 (4) abuse;

1 (5) misuse;

2 (6) neglect;

3 (7) failure to perform regular maintenance; and

4 (8) failure to maintain adequate oil, coolant, and
5 other required fluids or lubricants.

6 (d) If the implied warranty of merchantability described in
7 this Section is breached, the consumer shall give reasonable
8 notice to the seller within 30 days after the date of the
9 breach. Before the consumer exercises another remedy pursuant
10 to Article 2 of the Uniform Commercial Code, the seller shall
11 have a reasonable opportunity to repair the used motor vehicle.
12 The consumer shall pay one-half of the cost of the first 2
13 repairs necessary to bring the used motor vehicle into
14 compliance with the warranty. The payments by the consumer are
15 limited to a maximum payment of \$25 for each repair.

16 (e) The maximum liability of a seller pursuant to this
17 Section is limited to the purchase price paid for the used
18 motor vehicle, to be refunded to the consumer or lender, as
19 applicable, in exchange for return of the vehicle, unless the
20 seller knew or should have known of the defect given the
21 circumstances in which the vehicle was acquired or sold and the
22 seller did not disclose that defect.

23 (f) An agreement for the sale of a used motor vehicle by a
24 used motor vehicle dealer is voidable at the option of the
25 consumer unless it contains on its face the following
26 conspicuous statement printed in boldface, 10-point or larger

1 type set off from the body of the agreement:

2 "Illinois law requires that this vehicle will be fit for
3 the ordinary purposes for which the vehicle is used for 15 days
4 or 500 miles after delivery, whichever is earlier, except with
5 regard to particular defects disclosed on the first page of
6 this agreement. You (the consumer) will have to pay up to \$25
7 for each of the first 2 repairs if the warranty is violated."

8 (g) The inclusion in the agreement of the statement
9 prescribed in subsection (f) of this Section does not create an
10 express warranty.

11 (h) A consumer of a used motor vehicle may waive the
12 implied warranty of merchantability only for a particular
13 defect in the vehicle and only if all of the following
14 conditions are satisfied:

15 (1) the used motor vehicle dealer fully and accurately
16 discloses to the consumer that because of circumstances
17 unusual to the business of the used motor vehicle dealer,
18 the used motor vehicle has a particular defect;

19 (2) the consumer agrees to buy the used motor vehicle
20 after disclosure of the defect; and

21 (3) before the sale, the consumer indicates agreement
22 to the waiver by signing and dating the following
23 conspicuous statement that is printed on the first page of
24 the sales agreement in boldface 10-point or larger type and
25 that is written in the language in which the presentation
26 was made:

1 "Attention consumer: sign here only if the dealer has told
 2 you that this vehicle has the following problem or problems and
 3 you agree to buy the vehicle on those terms:

- 4 1. _____
 5 2. _____
 6 3. _____ .".

7 (i) A used motor vehicle dealer has the burden to prove by
 8 a preponderance of the evidence that the dealer complied with
 9 subsection (h) of this Section.

10 (j) A consumer or seller that is aggrieved by a transaction
 11 pursuant to this Section and that seeks a legal remedy shall
 12 pursue an appropriate remedy prescribed in Article 2 of the
 13 Uniform Commercial Code and shall comply with the requirements
 14 prescribed in that Article.

15 (k) It shall be an affirmative defense to any claim under
 16 this Section that:

17 (1) an alleged nonconformity does not substantially
 18 impair the use and market value of the motor vehicle;

19 (2) a nonconformity is the result of abuse, neglect, or
 20 unauthorized modifications or alterations of the motor
 21 vehicle;

22 (3) a claim by a consumer was not filed in good faith;
 23 or

24 (4) any other affirmative defense allowed by law.